IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KATHLEEN BROWN, Plaintiff, v. BENJAMIN WILTBANK, II and JUANITA YVONNE WILTBANK, husband and wife; CLAUDIA WILTBANK-JOHNSON; HOMEOWNERS LOAN CORP., a Delaware Corporation; and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware Corporation, Defendants.	)	C.A. No. 2170-MA

MEMORANDUM OPINION

Submitted: July 14, 2011
Decided: October 13, 2011

Michael L. Sensor, Esq., PERRY & SENSOR, Wilmington, Delaware; *Attorneys for Plaintiff Kathleen Brown.*

Benjamin Wiltbank, II and Juanita Yvonne Wiltbank, Milton, Delaware; *pro se Defendants*.

Claudia Wiltbank-Johnson, Lewes, Delaware, *pro se Defendant*.

Robert G. Gibbs, Esq., WILSON, HALBROOK & BAYARD, P.A., Georgetown, Delaware; *Attorneys for Defendants Homeowners Loan Corporation and Mortgage Electronic Registration Systems, Inc.*

PARSONS, Vice Chancellor.

This matter involves a dispute over the disposition of a certain parcel of real estate located at 406 St. Paul Street, Lewes, Delaware. The property was the residence of Arlington J. Wiltbank, who died on December 5, 2002. Wiltbank is survived by three children, Benjamin Wiltbank, II, Kathleen Brown, and Claudia Wiltbank-Johnson. All three children previously were parties to a challenge to Wiltbank's Last Will and Testament which resulted in a judgment invalidating the Will and passing his estate through intestacy to each child in equal shares, *per stirpes*. Pursuant to that judgment, Kathleen brought this action to quiet title to the property at 406 St. Paul Street and to seek its partition by sale. Claudia Wiltbank-Johnson objected to the partition, claiming that Wiltbank promised her a life estate in the property in exchange for caring for him toward the end of his life.

The action was referred to the Master and a trial was conducted on the question of whether Wiltbank granted Claudia a life estate in the property in exchange for caring for him toward the end of his life. The Master issued a final report finding that Wiltbank did not grant Claudia a life estate and Claudia filed exceptions to that report.

Pursuant to Court of Chancery Rule 144, I have carefully reviewed *de novo* the record of the trial before the Master and also have heard live testimony regarding certain potentially dispositive credibility issues that I found existed based on my review of the record. For the reasons discussed in this Memorandum Opinion, and consistent with the Master's Report, I conclude that Claudia has not

satisfied her burden of proving that Wiltbank granted her a life estate in the property in exchange for caring for him toward the end of his life. Therefore, the partition of the property may proceed.

I. BACKGROUND

A. The Parties[1]

Plaintiff, Kathleen Brown, is Wiltbank's daughter and the wife of Reverend Thomas Brown. Under this Court's prior ruling invalidating Wiltbank's Last Will and Testament, she is entitled to a one-third interest in Wiltbank's estate through intestate succession.

Defendant Claudia Wiltbank-Johnson is Wiltbank's eldest child. She also is entitled to a one-third interest in Wiltbank's estate.

Defendants Benjamin Wiltbank and his wife, Juanita Wiltbank, are the son and daughter-in-law of Wiltbank. Benjamin is entitled to the final one-third interest in the estate.

The other Defendants named in this action are Homeowners Loan Corporation ("HLC") and Mortgage Electronic Registration Systems ("MERS"), which are both Delaware corporations. HLC and MERS extended a loan to Benjamin secured by a mortgage on the property at 406 St. Paul Street during the

[1] With the exception of Arlington J. Wiltbank, I refer to the members of the Wiltbank family by their first names for the sake of brevity and to avoid confusion.

brief period following Wiltbank's death and before the Will contest, when Benjamin controlled that property.[2]

B. Facts

This case involves a dispute over whether Arlington J. Wiltbank promised to grant a life estate in his property at 406 St. Paul Street, Lewes, Delaware (the "Property") to his daughter Claudia in exchange for the care and assistance she provided him toward the end of his life. According to Claudia, Wiltbank called her in 2000 and asked her to come to Delaware to take care of him.[3] Wiltbank allegedly was upset with Kathleen over a real estate transaction related to another property he owned and he wanted Claudia to relocate from Philadelphia to Delaware to take care of him because at the time he was "living bad . . . . [a] senior citizen . . . . [and] handicapped."[4]

Claudia was close to her father and she loved him dearly.[5] When her father asked for her help, Claudia testified that she "came down like a normal person

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2 During the pendency of this litigation, HLC and MERS obtained a default judgment against Benjamin and Juanita as to Benjamin's one-third interest in the property. Because the involvement of HLC and MERS is not central to the factual disputes in this case, and because these Defendants support Kathleen's motion to partition the property, it is not necessary to refer to them further.

3 2009 Trial Transcript before Master Ayvazian ("1st T. Tr.") 56. When the identity of the testifying witness is not clear from the text, it is indicated parenthetically.

4 *Id.* at 59 (Claudia).

5 2011 Trial Transcript before this Court ("2d T. Tr.") 30 (Claudia).

supposed to do and take care of her parents, my father."[6] As the eldest child, Claudia felt duty-bound to care for her father in his old age, a sentiment her mother had reinforced in her while she was alive.[7] To Claudia, caring for her father "was the right thing to do" and when asked at trial whether she had any ulterior motive for caring for her father other than her feelings of love and duty, Claudia testified that she "just came down to take care of [her] father because he called [her] from [*sic*] Philadelphia, 'Claudia, I need you to come home to take care of me.' Boom; I'm here."[8]

The parties dispute the extent to which Claudia actually cared for her father during the period between 2000 and Wiltbank's death in December 2002. According to Kathleen, Wiltbank was released from a rehabilitation center in 2001, conditioned on the installation of a handicapped ramp and toilet at the Property.[9] While Claudia originally claimed to have paid for the installations to be made,[10] Kathleen, who I found to be a credible witness, testified that the installations were paid for by the government and that the actual installations were

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6 *Id.* at 33-34.

7 *Id.* at 29-30.

8 *Id.* at 34.

9 *Id.* at 21.

10 Pl.'s Ex. ("PX") 4 ¶ 6.

performed by Kathleen's husband, Brown, and her ex-son-in-law.[11] From Claudia's own evidence, it appears that the only expenses she ever paid for Wiltbank before his death were a $65 medical bill and a $200 partial payment on the electric bill for the Property.[12]

According to Kathleen's testimony, Wiltbank's day-to-day care was a group effort. Wiltbank received regular assistance from Kathleen and her family, the Visiting Nurses Association, Spencer Kennedy and his wife, who were family friends, and Claudia.[13] Claudia's children, Pamela Mabin and Harold "Nicky" Johnson, also were involved heavily with Wiltbank's care. Pamela testified that when she first arrived at the Property in 2001, the house was not in a livable condition.[14] According to Pamela, Claudia would watch her children while Pamela cleaned the house.[15] Pamela also testified that in 2001 Claudia regularly

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11 1st T. Tr. 22. Claudia later admitted that, in fact, she did not pay to have the ramp or toilet installed. 2d T. Tr. 28.

12 PX 4 Ex. A; 1st T. Tr. 79-86; 2d T. Tr. 47. While Claudia submitted various other checks as evidence of her financial support of Wiltbank during this period, most of the checks were either for Claudia's own expenses or costs relating to the Property that arose after Wiltbank's death. PX 4 Ex. A.

13 1st T. Tr. 23.

14 *Id.* at 116-17.

15 *Id.* at 117-18.

cared for Wiltbank.[16] In September 2002, shortly before Wiltbank's death, Nicky moved in with Wiltbank to help care for him full-time.[17]

While Kathleen acknowledged that Claudia was back and forth between Philadelphia and the Property during this period, Kathleen could not remember ever seeing Claudia at the Property when she visited Wiltbank.[18] Kathleen further testified that Wiltbank told her that he had ejected Claudia from the Property in the spring of 2002 after an alleged incident in which Claudia pushed him into his wheelchair.[19] While it is unclear from the record whether and to what extent such an incident occurred, I find that, during 2002, Claudia had a reduced presence at the Property. Contrary to Kathleen's allegations, Pamela explained that Claudia's reduced presence during this period was due to the fact that Claudia was accompanying Pamela and her son on trips to New York, where her son was modeling.[20] What is clear from the record is that Claudia never completely relocated to Delaware while she was caring for Wiltbank between 2000 and December 2002. During that period, Claudia maintained a residence in Sharon

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16 *Id.* at 118.

17 *Id.* at 119-20 (Pamela).

18 *Id.* at 24.

19 *Id.* at 25.

20 *Id*. at 120-21.

Hill, Pennsylvania with Godwin Fisher, who she referred to as her husband.[21] Fisher and Claudia maintained that residence until 2003.[22]

While Claudia was traveling back and forth between Pennsylvania and Delaware, Fisher remained in Pennsylvania to run his transportation business. Although Claudia previously had worked for Fisher's company and left her job around the time she began caring for Wiltbank in 2000, Claudia testified that not much actually changed about her financial condition.[23] She no longer received a payroll check from Fisher, but he continued to support her.[24]

C. Procedural History

This case arises from this Court's prior ruling in *In re Wiltbank* ("*Wiltbank I*"),[25] in which Kathleen and Claudia successfully challenged Wiltbank's Last Will and Testament as having been the product of undue influence exerted by Benjamin over his father.[26] As a result of the ruling in *Wiltbank I*, Wiltbank's Will was declared void and his estate passed through intestacy to his three children in equal shares, *per stirpes*.[27]

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21 *Id.* at 54-55 (Claudia).

22 2d. T. Tr. 42 (Claudia).

23 1st T. Tr. 52.

24 *Id.* at 53, 75 (Claudia).

25 2005 WL 2810725 (Del. Ch. Oct. 18, 2005).

26 *Id.* at *9.

27 *Id.* at *11.

Following *Wiltbank I*, Kathleen filed this action to quiet title and for partition by sale on May 16, 2006. On November 28, 2006, the case was assigned to Master Ayvazian. Claudia filed an answer in opposition to the partition on November 28, 2007, claiming, among other things, that Wiltbank promised her a life estate in the Property in exchange for taking care of him before his death.

The Master held a trial on the issue of Claudia's life estate, at which Claudia represented herself *pro se*. On April 8, 2009, Master Ayvazian issued a draft report from the bench granting Kathleen's petition for partition by sale. Claudia filed exceptions to the draft report on April 17 and again on April 20, 2009. While the parties were briefing the exceptions to the draft report during the summer of 2009, Claudia obtained counsel. On February 22, 2010, the Master issued her Final Report, again finding in favor of Kathleen and ordering the partition of the Property by sale. With the assistance of counsel, Claudia timely filed exceptions to the Master's Final Report.

On November 10, 2010, I notified the parties that I had determined there were potentially dispositive issues of credibility relating to the testimony of Claudia and Kathleen and that the record would benefit from a hearing on certain specific issues. Those issues were: (1) whether Claudia and Wiltbank entered into an oral contract whereby Wiltbank promised Claudia a life estate in the Property in exchange for caring for him toward the end of his life; and (2) whether Wiltbank asked Claudia to leave the Property in 2002.

Before the credibility hearing could be scheduled, Claudia's counsel moved to withdraw on the grounds that (1) counsel had been asked to pursue actions it considered repugnant or with which it had a fundamental disagreement with the client, (2) the client had rendered the representation unreasonably difficult, and (3) other good cause for withdrawal existed. Claudia opposed the motion and the Court conducted a telephone conference regarding it on February 4, 2011. During the hearing, Claudia claimed that she could not represent herself *pro se* because of her poor physical health and anxiety. Instead, she asked the Court to allow Fisher, who is not an attorney, to represent her in the proceedings if her counsel was allowed to withdraw. Based on Claudia's health concerns and her desire to have Fisher represent her, a hearing on the motion to withdraw was scheduled for March 8, 2011, so that Claudia would have the opportunity to establish medical or legal support for her request to have Fisher represent her as a guardian *ad litem*.

On February 28, 2011, Claudia submitted a letter that the Court treated as a petition for the appointment of Fisher to act as her guardian *ad litem* for purposes of the litigation. Claudia attached to the letter a signed statement from Dawn R. Hood, a licensed social worker, recommending that Fisher be appointed as Claudia's guardian as a result of Claudia's poor physical health and anxiety. In a letter on March 4, 2011, the Court informed Claudia of the inadequacy of the social worker's statement and suggested that Claudia promptly submit a signed affidavit or declaration from a medical doctor, pursuant to 12 *Del. C.* § 3901(a)(2), certifying that she "by reason of mental or physical incapacity, [was] unable

properly to manage or care for [her] own . . . property in this litigation, namely, the interest [she] claim[ed] in the [Property] . . . and, in consequence thereof, [was] in danger of dissipating or losing such property."[28]

At the March 8 hearing on the motion to withdraw, Claudia was accompanied by Cheri Honkala, a national housing advocate from the Poor People's Economic Human Rights Campaign.[29] Honkala, who is not an attorney, requested, on Claudia's behalf, that the Court allow Claudia more time to find counsel.[30] The Court granted the request and continued the hearing until April 6. By letter dated March 31, 2011, however, Claudia's withdrawing counsel notified the Court that Claudia had informed him that she would not seek the appointment of Fisher as her guardian *ad litem* and had decided to represent herself *pro se* in the proceedings. A teleconference on the motion was held and the Court granted counsel's motion to withdraw on April 8.

A credibility hearing was finally scheduled to be held in Dover on July 14-15, 2011. At the hearing, however, Claudia informed the Court that she had filed the preceding day a Notice of Removal in the Federal District Court for the District of Wilmington and a Preemptory Writ of Prohibition with the United

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[28] Letter from Vice Chancellor Donald F. Parsons to Claudia Wiltbank-Johnson (Mar. 4, 2011), Docket Item 227, Brown v. Wiltbank, Del. Ch. C.A. No. 2170-MA (alterations omitted).

[29] Mar. 8, 2011 Tr. before this Court 19.

[30] *Id.* at 19-20.

States Court of Appeals for the Third Circuit and that she, therefore, objected to proceeding with the hearing. Although the notice and writ are largely incomprehensible, Claudia apparently attempted to remove this action to federal court by claiming federal question jurisdiction based on allegations of racial discrimination. The Third Circuit denied the writ on August 19, 2011, for lack of jurisdiction, and the District Court dismissed the removal action as untimely on September 15, 2011, remanding the case back to this Court.

Although Claudia objected to the credibility hearing on July 14, I denied her request to continue it. Kathleen, her husband, and Claudia testified at the hearing. Claudia refused to call any other witnesses or present any documentary evidence based on her decision to proceed in federal court, instead.

1. The Record Has Been Fully Developed and this Court's *De Novo* Review is Complete

Although Claudia objected to the credibility hearing and refused to testify fully in it based on her contemporaneous federal filings, I find that Claudia had notice of the hearing and a full and fair opportunity to participate. Thus, this case is now ripe for a final determination regarding Claudia's claim of a life estate in the Property. During the hearing, Claudia testified on her own behalf and also cross-examined Kathleen's witnesses. In addition, I acknowledged Claudia's objections to the hearing and her decision to pursue relief in federal court. Her removal claim and related arguments have now been dismissed by the federal courts, and this action is fully before this Court.

Throughout the course of this litigation, which now has spanned more than five years, Claudia has been given ample opportunity to present her evidence and develop the record in support of her claims. While it is unfortunate that Claudia has had to proceed *pro se* for much of this litigation, she is not entirely without fault in that regard. Moreover, her filings and actions before this Court have exhibited a wanton disregard for the laws of this State and the procedural rules of this forum. Instead of presenting the merits of her case, Claudia repeatedly has engaged in baseless, erratic, and largely incomprehensible *ad hominem* attacks against opposing counsel, her own counsel, and this Court that unnecessarily have prolonged and delayed these proceedings. At the same time, Claudia has enjoyed the benefit of living at the Property, while Kathleen, HLC, and MERS have had to wait to receive what, as discussed *infra*, is their rightful interest in the Property. As a result, I am satisfied that, in terms of credibility issues, the record in this case has been developed sufficiently to warrant a final judgment on the merits of Claudia's claim that Wiltbank granted her a life estate in the Property. No further proceedings or hearings are necessary.[31]

[31] I have reviewed the notice of removal and related papers remanded to this Court by the United States District Court for the District of Delaware. To the extent this Court understands those papers, they appear to complain about the handling of Claudia's claim, as well as the disposition of it on the merits. Those issues, however, are part of this case and, therefore, are subsumed in the rulings set forth in this Memorandum Opinion.

II. ANALYSIS

A. Standard of Review of the Master's Report

This Court reviews a Master's Report *de novo* as to both findings of fact and conclusions of law.[32] Unlike the review of a decision made by a trial judge duly appointed by the Governor and confirmed by the Senate, the factual findings made by a Master are not entitled to any special weight or deference.[33] *De novo* review, however, may be conducted on the record

> [e]ven where the parties except to one or more of the master's factual findings . . . . If the parties object to the conclusions that the master drew from the evidence, the court may read the portion of the record relevant to the exception raised and draw its own factual conclusions. Only where exceptions raise a *bona fide* issue as to dispositive credibility determinations will a new hearing be inevitable. In those cases the new hearing can be limited to the witness or witnesses whose credibility is at issue.[34]

In this case, I determined that certain *bona fide* issues do exist as to dispositive credibility determinations made by the Master. Having supplemented the record accordingly, I now turn to my *de novo* findings of fact and conclusions of law in this matter.

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[32] *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

[33] *Id*. at 182-83, 184.

[34] *Id*. at 184.

B. Claudia Did Not Prove the Existence of an Oral Contract between Herself and Wiltbank

This case centers on the single issue of whether an oral contract existed between Wiltbank and Claudia under which Wiltbank promised to grant Claudia a life estate in the Property in exchange for Claudia caring for Wiltbank toward the end of his life.[35] Under Delaware law, to prove the existence of a contract, the party alleging its existence must show "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration."[36] For contracts to make a Will, heightened scrutiny is applied, requiring "clear and convincing" evidence as to both the existence of a contract, as well as its terms.[37] Furthermore, oral

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[35] Plaintiff, in her post-trial memorandum, treats Claudia's claims as alleging the existence of an oral contract to convey an interest in land. Pl.'s Post-Trial Mem. 2. While there is some uncertainty as to whether Claudia claims that the transfer of the life estate was to be accomplished by a general transfer of an interest in land during Wiltbank's life or a testamentary devise upon his death, it appears that Claudia expected that she would receive a life estate only after Wiltbank's death. As a result, I interpret her claims as alleging the existence of an oral contract to make a Will, which carries a slightly higher burden of proof. *See Eaton v. Eaton*, 2005 WL 3529110, at *3 (Del. Ch. Dec. 19, 2005) ("A party attempting to enforce a contract to make a will must always appreciate, however, that the law looks askance at such contracts, with probate law serving as the preferred means of devising property."). In any case, both types of claims require clear and convincing proof of the existence of an oral contract. Moreover, even if the lower burden of a preponderance of the evidence applied, I would reach the same conclusion.

[36] *In re Justison*, 2005 WL 217035, at *10 (Del. Ch. Jan. 21, 2005) (citing *Wood v. State*, 815 A.2d 350 (Del. 2003) (TABLE)).

[37] 6 *Del. C.* § 2715 ("No action shall be brought to charge the personal representatives or heirs of any deceased person upon any agreement to make a will of real or personal property, or to give a legacy or make a

contracts to make a Will are generally unenforceable unless the party alleging the contract can prove that it actually performed under the contract in reliance on a *quid pro quo* arrangement and that not enforcing the arrangement would be inequitable.[38]

While the burden of proving the existence of an oral contract to make a Will by "clear and convincing" evidence is not insurmountable, it is a heavy burden.[39] For evidence to be "clear and convincing," it must "produce[] in the mind of the trier of fact an abiding conviction that the truth of [the] factual contentions is highly probable . . . reasonably certain, and free from serious doubt."[40] To carry that burden here, Claudia must prove clearly and convincingly that (1) Wiltbank offered her a life estate in the Property in exchange for caring for him toward the end of his life, (2) that she accepted that offer and cared for

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devise, unless such agreement is reduced to writing."); *see also Eaton*, 2005 WL 3529110, at *3 ("[T]he party seeking enforcement of the alleged contract 'must show clear and convincing evidence the parties entered into a legally binding agreement.' Thus, it is the 'clear and convincing' standard that applies in determining both the existence and the terms of an alleged contract to make a will.") (footnotes omitted).

38 *See Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988) ("[A] partly performed oral contract may be enforced by an order for specific performance upon proof by clear and convincing evidence of actual part performance."); *Eaton*, 2005 WL 3529110, at *3 ("[I]t must be established that such performance 'occurred in reliance on the oral agreement, suggesting a *quid pro quo* arrangement.'").

39 *Eaton*, 2005 WL 3529110, at *3.

40 *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2002) (citing Del. Pattern Jury Instructions Civil § 4.3 (2000)).

Wiltbank as part of a *quid pro quo* exchange for the Property, and (3) denying her a life estate in the Property would be inequitable. For the reasons stated below, I find that Claudia has not met her burden as to any of these elements.

1. Claudia Did Not Prove Wiltbank Offered Her a Life Estate in the Property in Exchange for Care

Claudia alleges that Wiltbank offered her a life estate in the Property in exchange for caring for him toward the end of his life. In support of this assertion, Claudia claims that Wiltbank told her on numerous occasions throughout the 1990s and 2000 that she and her husband "would have lifetime rights to be permitted to live at 406 St. Paul Street, Lewes, Delaware . . . in exchange for relocating to the property and providing goods and services to [Wiltbank] during his lifetime."[41] In addition, both Claudia and her friend Carol Carter testified that Wiltbank had stated that he was going to give Claudia the Property because "Kathleen has a house, Benjamin has a house and this [the Property] is going to be [Claudia's] house."[42] According to Claudia, Wiltbank wanted the house to remain with the family and intended to give Claudia the house because he trusted her not to sell it.[43]

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41 PX 4 ¶ 2; 1st T. Tr. 69-70 (Claudia).

42 1st T. Tr. 61 (Claudia), 126 (Carol).

43 *See Id.* at 62 ("He gave the house to me for the rest of my life because this was our inherit[ance], all of us. It wasn't supposed to be sold. Mother said not to sell nothing . . . .").

In considering the evidence, I begin by noting that Claudia relies almost entirely on her own testimony and that of her close friend, Carter, to prove the existence of an offer from Wiltbank.[44] Having reviewed the record and from my own observations made at the July 14, 2011 credibility hearing, I find Claudia's testimony to be both self-serving and unreliable.[45] Likewise, I find Carter, who

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[44] Claudia also submitted into evidence an unsigned Will that purported to give the Property exclusively to Claudia. PX 2. Claudia claims she found this draft Will in Wiltbank's Bible before the conclusion of *Wiltbank I*. 2d T. Tr. 40. That draft Will, however, was never introduced into evidence in that case. *Id.* Instead, during the trial of *Wiltbank I*, Claudia presented another unsigned Will, which she claimed to have found in the same Bible, that left Wiltbank's property to each of his three children in equal shares. *Id.* at 35. Aside from the fact that the second draft Will was never executed and therefore has no legal effect, I find the circumstances in which Claudia allegedly found this document to be highly suspect. Although Claudia claims to have found both draft Wills at the same time and in the same place, only the unsigned Will that supported Claudia's contentions in *Wiltbank I* was ever submitted into evidence at that trial. In this case, Claudia is making different claims as to Wiltbank's testamentary intent. Therefore, it is convenient, to say the least, that the new draft Will Claudia has proffered appears to support her present contentions. Indeed, the new draft is especially suspect because, although Claudia claims to have given the second draft Will to her lawyer during *Wiltbank I*, she did not notify anyone else about it before the commencement of this action, including Kathleen, who was a co-plaintiff with Claudia in *Wiltbank I*. *Id.* at 58 (Claudia), 96 (Kathleen). In light of the highly suspicious circumstances in which the second draft Will was purportedly found, I accord the second draft Will and its contents no weight as evidence of Wiltbank's intent to leave Claudia a life estate in the Property.

[45] For example, Claudia stated in an affidavit that Wiltbank had promised her on numerous occasions throughout the 1990s and in 2000 that she would receive a life estate in exchange for relocating to Delaware and providing her father with goods and services. PX 4 ¶ 2; 1st T. Tr. 69-70. Claudia's own testimony, however, alleges that Wiltbank only asked her to care for him in 2000, after his health had begun to fail and long after his wife had

lives with Claudia at the Property, to be an interested party and, accordingly, I do not accord her testimony substantial weight.[46] Without further corroboration from an uninterested party, I find Claudia and Carter's testimony to be insufficient to meet the high standard of clear and convincing evidence necessary to prove the existence of an offer in this case. In fact, I find that such uncorroborated testimony would not even meet the standard of establishing their claims by a preponderance of the evidence.

Furthermore, even if I were to credit fully Claudia's testimony as to Wiltbank's statements offering her a life estate in the Property, her testimony is largely self-defeating and more strongly supports a finding that Wiltbank intended to make a testamentary gift, rather than enter into a *quid pro quo* arrangement requiring mutual performance. For example, Wiltbank's alleged statement to Claudia that "Kathleen has a house, Benjamin has a house and [the Property] is going to be your house,"[47] suggests that Wiltbank desired to give Claudia a life estate in the Property because she was the only child of his who did not have her own home. Likewise, Claudia's testimony that Wiltbank intended to give her the house "because this was our inherita[nce], all of us. It wasn't supposed to be sold" further supports a finding that Wiltbank was motivated for reasons other than a

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died. I find Claudia's testimony is marred with similar self-serving, inconsistent statements.

46 1st T. Tr. 128 (Carter).

47 *Id.* at 61 (Claudia).

quid pro quo arrangement with Claudia in exchange for her care and assistance. Finally, to the extent Claudia alleged in her affidavit that Wiltbank actually made statements evidencing a *quid pro quo* arrangement, Claudia claimed that such statements were made throughout the 1990s, before Wiltbank's need for Claudia's care arose.[48] I find, therefore, that these statements do not provide reliable support for the assertion that Wiltbank offered Claudia a life estate in the Property in exchange for care.

Upon review of the record, including the live testimony of Claudia, I find that Claudia has not carried her burden in proving that Wiltbank offered to grant her a life estate in the Property in exchange for caring for him toward the end of his life. Instead, the evidence more strongly indicates that Wiltbank intended, if anything, to make a gift to Claudia. Unfortunately, this alleged intent was never documented as part of a valid testamentary plan, and, therefore, is unenforceable.[49]

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[48] PX 4 ¶ 2; 1st T. Tr. 69.

[49] *See* Restatement (Second) of Contracts § 95 (stating that a promise without consideration is not binding without a writing); *Ripsom v. Beaver Blacktop, Inc.*, 1988 WL 32071, at *10 (Del. Super. Apr. 26, 1988) ("An agreement must be supported by consideration to become a contract."); *see also Am. Univ. v. Todd*, 1 A.2d 595, 597 (Del. Super. 1938) ("A promise, which is made conditionally on the will of a promisor, is generally of no value, for one who promises to do a thing, only if it pleases him to do it, is not bound to perform it at all.").

2. Claudia Did Not Prove that She Cared for Wiltbank as Part of a *Quid Pro Quo* Exchange for a Life Estate in the Property

In addition to her failure to prove the existence of an offer from her father, Claudia also failed to establish, by clear and convincing evidence, that she actually performed her part of the bargain and that her performance was part of a *quid pro quo* arrangement she had with her father, rather than a gratuitous act of filial devotion.[50]

The record shows that Claudia loved her father and that she provided some level of care and assistance to him toward the end of his life. To enforce an oral contract to make a Will, however, Claudia must actually prove the terms of the contract.[51] Again, the only evidence that Claudia adduced regarding the terms of her performance under the contract is her own conflicting testimony. Moreover, to the extent Claudia alleged that her *quid pro quo* arrangement with her father involved relocating to Delaware, I find the record ambiguous as to whether Claudia actually relocated here, as opposed simply to visiting her father more frequently. During the entire relevant period, Claudia maintained her residence in Sharon Hill, Pennsylvania, where her husband remained, and she commuted back and forth between the two properties on a regular basis. At best, the record is unclear as to (1) what the alleged contract required of Claudia in terms of

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[50] *See Eaton v. Eaton*, 2005 WL 3529110, at *4 (Del. Ch. Dec. 19, 2005).

[51] *Id.* at *3.

"relocat[ing]" and (2) whether Claudia met those obligations, but Claudia bore the burden of proving both those elements.

Based on my *de novo* review of the evidence, I also concur with the Master that Claudia's testimony undermines her claim as to her purpose in caring for her father and supports, instead, a finding that Claudia cared for her father for reasons other than in exchange for a life estate in the Property. Claudia repeatedly testified that, as Wiltbank's eldest child, she felt duty-bound to care for him in his old age.[52] Claudia loved her father and cared for him out of her sense of compassion and duty.[53] Claudia testified that she came down to Delaware to care for Wiltbank because she loved him and because it was the right thing to do.[54] When asked whether she came to Delaware for any reason other than her love for her father, Claudia credibly responded, "I just came down like a normal person supposed to do and take care of her parents, my father" and "I just came down to take care of my father because he called me from [*sic*] Philadelphia, 'Claudia, I need you to come home to take care of me.' Boom; I'm here."[55] Claudia never testified that she agreed to care for her father only in exchange for a life estate in the Property. In fact, when she was asked during the trial in *Wiltbank I* whether

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52 1st T. Tr. 60; 2d T. Tr. 29-30.

53 1st T. Tr. 17 (Claudia), 126 (Carter).

54 *Id.* at 60-61.

55 *Id.* at 33, 34.

she was "looking for any type of financial reward or gain for taking care of [her] father," Claudia replied "Oh, absolutely not."[56]

Claudia's altruistic purpose in caring for her father is highly commendable as a personal matter. As a legal matter, however, Claudia's dutiful motivation, without more, undermines her claim that she cared for her father in exchange for his alleged promise to give her a life estate in the Property. I find it more likely than not that Claudia provided the care that she did for her father without regard to whether he had promised her a life estate in exchange. Claudia's own testimony clearly supports that finding. Therefore, Claudia has not carried her burden of proving by clear and convincing evidence, or even a preponderance of the evidence, that she cared for Wiltbank as part of a *quid pro quo* arrangement in exchange for a life estate.

3. It Would Not be Inequitable to Deny Claudia a Life Estate in the Property

Because I find that Claudia did not carry her burden of proving the existence of an oral contract between her and Wiltbank and her performance in reliance on such a contract, I do not consider it to be inequitable to deny Claudia a life estate in the Property. To the extent Claudia now claims that denying her a life estate may make her homeless, that unfortunate situation arose after

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[56] Trial Tr., Docket Item 54, In re Wiltbank**,** Del. Ch. C.A. No. 2251-S at 116-17.

Wiltbank's death and has nothing to do with the merits of this case.[57] Moreover, as Master Ayvazian noted in her Final Report, Claudia will not be empty-handed after this decision.[58] Claudia still is entitled to a one-third interest in the proceeds from the sale of the Property. Therefore, a prompt partition sale of the Property would assist her in her search for an alternative housing arrangement.

III. CONCLUSION

For the reasons discussed in this Memorandum Opinion and based on an independent *de novo* review of the record before the Master and the supplemental record created before me, I concur with the conclusions reached in the Master's Final Report. Specifically, I conclude that Claudia has not established by clear and convincing evidence, or even a preponderance of the evidence, that a contract to make a Will existed between her and Wiltbank under which he would grant her a life estate in the Property in exchange for care in his last years. As a result, I will grant Kathleen's Petition for Partition. Kathleen's counsel shall submit a proposed form of final judgment, on notice to Claudia, HCL, and MERS, that provides for an independent appraisal of the Property and for Claudia to vacate the Property within a reasonable period of time, prescribes a procedure for a prompt sale of the Property at as close to a fair market price as is feasible, and specifies how the proceeds will be distributed.

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[57] Claudia and Fisher lost their home in Sharon Hill in 2003. 2d. T. Tr. 42.

[58] Master's Final Report 10.